



State of Utah

**Department of
Natural Resources**

MICHAEL R. STYLER
Executive Director

**Division of
Oil, Gas & Mining**

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

January 4, 2007

CERTIFIED RETURN RECEIPT
7004 2510 004 1824 8149

James B. Mascaro
7539 W Jem Cir.
Herriman, Utah 84096

Subject: Proposed Assessment for Violation #MV2006-01-10-01, James B. Mascaro and Sons LLC, Barney Mine, M0490055, Utah County, Utah

Dear Mr. Mascaro:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced Notice of Violation. The violation was issued by Division Inspector, Lynn Kunzler, on November 8, 2006 (Our records indicate you actually received it on December 18, 2006). Rule R647-7-103 et. seq. has been utilized to formulate the proposed penalty for the violation as follows:

- MV-2006-01-10- Violation 1 of 1 \$1,980

The enclosed worksheet specifically outlines how the violation was assessed.

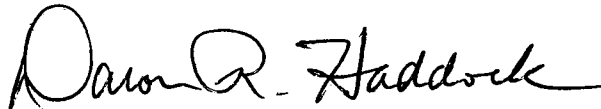
By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this violation has been considered in determining the facts surrounding the violation and the amount of penalty. If the violation has not been abated at the time of the proposed assessment, the assignment of good faith points cannot be made.

Under R647-7-106, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of the Violation, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director, Associate Director or appointed Conference Officer. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.
2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

If a timely request for review is not made, the fact of the violation will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the final assessment. Please remit payment to the Division, mail c/o Vickie Bailey.

Sincerely,



Daron R. Haddock
Assessment Officer

drh/vs

Enclosure: Worksheet

cc: Vickie Southwick, Exec. Sec.

Vicki Bailey, Accounting

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2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

*** *An Operator is required to file a notice of intention to commence mining operations with the Division of Oil Gas and Mining prior to conducting mining operations. In this case the Operator filed an NOI, but is not conducting mining operations according to the NOI. The maps in the NOI identify the area to be mined as about 500 feet to the south of where mining is actually occurring. Also a new road has been constructed to the site that was not identified in the NOI and excavations are more extensive than originally identified. Disturbance has actually occurred.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

*** *The inspector stated that no damage occurred as a result of the violation. The Operator was removing rock from the site and there is potential for sediment to leave the site, but no evidence of impacts off the site was directly observed. The disturbed area is relatively small and the potential for damage is considered minimal because the excavation is small and done near the surface. No damage points are assigned.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? NA
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS N/A

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 25

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS:

*** *The Operator was cited for a similar violation in July of 2006. At that time the operator was not aware of the need for a permit from DOGM for this operation. He did secure a permit and was operating in the boundary of a small mine 3.25 acre area. He should have known that he needed to stay within the small mine boundary, but for some reason he chose to mine outside of the boundary. This indicates indifference to the rules or lack of reasonable care. A prudent operator would understand the need to stay within the boundary of a permit. The Operator is considered negligent because he was not careful to stay within the permit boundary and he mined at a greater depth than what was allowed under the current NOI. Points are assigned in the middle of the negligence range.*

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

X	Immediate Compliance	-11 to -20*
	(Immediately following the issuance of the NOV)	
X	Rapid Compliance	-1 to -10
	(Permittee used diligence to abate the violation)	
X	Normal Compliance	0
	(Operator complied within the abatement period required)	
	(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)	

*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- | | | |
|---|---|-------------|
| X | Rapid Compliance | -11 to -20* |
| | (Permittee used diligence to abate the violation) | |
| X | Normal Compliance | -1 to -10* |
| | (Operator complied within the abatement period required) | |
| X | Extended Compliance | 0 |
| | (Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete) | |
| | (Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan) | |

EASY OR DIFFICULT ABATEMENT? difficult

ASSIGN GOOD FAITH POINTS _____

PROVIDE AN EXPLANATION OF POINTS:

*** *The abatement has not yet been completed, so good faith points cannot be awarded at this time. This category will be looked at again after the abatement has been completed. Points will be awarded depending on how quickly the abatement is met.*

V. ASSESSMENT SUMMARY (R647-7-103.3)

NOTICE OF VIOLATION # MV-06-01-10-01

I.	TOTAL HISTORY POINTS	<u>5</u>
II.	TOTAL SERIOUSNESS POINTS	<u>25</u>
III.	TOTAL NEGLIGENCE POINTS	<u>8</u>
IV.	TOTAL GOOD FAITH POINTS	<u> </u>
	TOTAL ASSESSED POINTS	<u>38</u>
	TOTAL ASSESSED FINE	<u>\$ 1,980</u>